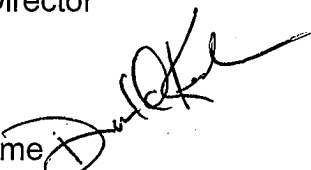


## Memorandum

**To:** Mr. John Kirlin, Executive Director  
Delta Vision

**From:** Mr. Donald Koch, Director  
Department of Fish and Game 

**Date:** September 25, 2008

**Subject:** Comments on the Delta Vision Strategic Plan (Version 4)

The Department provided comments on the Second Staff Draft of the Delta Vision Strategic Plan in a memorandum to the Blue Ribbon Task Force (BRTF) on August 6, 2008. We recently reviewed the Fourth Staff Draft Strategic Plan and believe this is a significant improvement over the last draft plan. Most of our concerns have been addressed in this current version. Our comments will therefore be brief.

The Delta Vision Strategic Plan states the Legislature should create the California Delta Ecosystem and Water Council (CDEW Council) which would replace the existing California Bay-Delta Authority (CBDA) and subsume CALFED programs. While we had significant concerns about the establishment of yet another governing board as envisioned in prior drafts, the replacement of CBDA and the oversight of those CALFED Program elements which have been shown to have ecosystem benefits is an appropriate measure. We believe there are many good features of the CALFED Program that should be recognized and built upon as the CDEW Plan is developed.

Since there is an existing regulatory framework for the CALFED Program that authorizes federal and state agencies to participate in the Program, the question becomes how to leverage the existing CALFED programmatic permits to expedite and streamline environmental compliance for strategic actions of the CDEW Plan. For example, new facilities that were analyzed in the CALFED programmatic documents may be permitted by developing tiered compliance documents. We do not want to lose that capacity.

The Strategic Plan acknowledges the critical need to link ecosystem policies and programs focused on the Delta with the upstream tributary watersheds. We believe this is essential to restoring the ecological integrity of the Delta ecosystem.

The Strategic Plan acknowledges the importance of the Department of Fish and Game (Department) and the federal fish agencies maintaining their existing regulatory authorities and responsibilities as implementing agencies for the CALFED Ecosystem Restoration Program (ERP). The Department is

responsible for implementation and coordination of ecosystem enhancement projects to the benefit of species Statewide, and is implementing this responsibility under the ERP through the creation of region-specific ecosystem restoration plans (e.g. the ERP Conservation Strategy for the Delta and Suisun Planning Area). This plan is being linked to ecosystem policies and programs of upstream watersheds as these other region-specific restoration plans currently under development (Sacramento and San Joaquin Valleys, Delta East-side Tributaries, and San Francisco Bay Area) are to be completed by the end of 2009. All of these efforts are closely coordinated with the responsible federal fish agencies (the ERP Implementing Agencies). The ERP Implementing Agencies should therefore assume most of the activities and responsibilities related to ecosystem planning and implementation activities described in the Strategic Plan and CDEW Plan.

The ERP Conservation Strategy for the Delta and Suisun Planning Area should serve as the ecosystem component of the CDEW Plan for the Delta. It is a body of work that has been several years in the making, has current scientific information and describes the rationale to support strategic actions. It also describes a framework for developing performance monitoring and adaptive management. The proposed governance structure would provide an oversight forum in which the implementation of ecosystem restoration actions are assessed and accounted for and which will provide policy direction. We believe the ERP has existing capacity to identify and implement the ecosystem components of the CDEW plan with appropriate oversight and accountability through the Department to the new governing entity.

The Delta Vision Strategic Plan would have the Legislature create a Conservancy which would undertake ecosystem enhancement activities and acquire decision making control over land needed to implement the CDEW plan. The Delta Conservancy would receive properties now in state, federal, or local ownership. This is a measure that would give the Delta Conservancy broad authority and tremendous responsibilities and would duplicate some existing authorities and responsibilities of the Department. Therefore, and in light of the aforementioned role the Department plays in implementing and coordinating ecosystem enhancement projects in the Delta and Statewide, the Department should play a prominent role on this Conservancy.

We believe a Conservancy could play an important role in implementing ecosystem restoration actions by providing a land acquisition organization focused on the needs of the Delta. A current limitation in effective implementation of ecosystem restoration is an entity which can work closely with the Delta community to develop and fund projects to improve the Delta ecosystem and Delta as Place. A Conservancy would be able to act in the capacity of a bridge between these interests, and this is the role that is best served by a Conservancy.

The Delta Conservancy does not need to become a land holder or land manager in the Delta. It is not clear how this proposal would enhance efficiency. We believe that existing land management organizations including the Department with adequate funding would be well-suited to take on this responsibility, acting in cooperation with other governmental and non-governmental entities.

The Delta Vision Strategic Plan would require the development of a legally binding CDEW Plan to establish a detailed management structure to achieve the coequal goals and direct land use activities in the Delta region. It is important to develop enforcement mechanisms for the CDEW Plan and ensure there is accountability in the governance structure. This was one of the shortcomings of the CBDA. The Strategic Plan states that consistency in governance among various agencies would be achieved through annual reporting requirements and withholding of funding from agencies undertaking activities that are deemed to be inconsistent with the CDEW Plan, or not making sufficient progress toward meeting CDEW performance measures. In the case of ecosystem restoration, benefits of restoration activities will not be immediate, no matter who implements them. Also, perceived "inconsistencies" with the CDEW Plan could be due to conditions beyond human control. Such decisions on "inconsistencies" and lack of progress toward meeting performance measures, and whether funding is going to be withheld as a result, should be made in consultation with the science program that will be in charge of overseeing the "adaptive management" aspects of the CDEW Plan.

Under the CDEW Plan, presumably Federal and state Endangered Species Acts regulatory decisions would be mediated by the CDEW Council. Nothing in the Plan can or should impact the Department's independent regulatory function and duty to protect the state's listed species. With the Department as the State's statutorily- designated trustee for fish and wildlife, it is not appropriate to further delegate these duties to this new entity.

The relationship of the proposed Delta Science Program and Delta Science and Engineering Board to the existing CALFED Science Program and IEP is still not clear in this version of the Strategic Plan. We believe the Science Program and IEP provide an effective mechanism for incorporating independent scientific and technical information to the CDEW Council.

The Strategic Plan calls for the Department, in collaboration with other agencies, to conduct certain studies and investigations that will likely require additional resources to complete these activities on the specified timelines. For example, the Strategic Plan calls for the Department to accelerate completion of instream flow analysis for the Delta watershed by 2015. The Department has developed a list of 22 priority streams or watercourses for future instream flow work pursuant to Public Resources Code 10004, which was developed with input by the State Water Resources Control Board, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. Six of these priority areas are within the

Central Valley watershed. The Department currently does not have adequate funding to institute these studies, so if the Department is directed to undertake additional studies of Central Valley streams and watercourses, additional funding will be necessary to perform this work. Other studies in the Strategic Plan include investigation of ways to enhance the Delta foodweb and address harmful invasive species and investigations of how to improve storage and conveyance facilities to obtain desired operational flexibility. In addition to augmented funding to the Department, funds could also be allocated to the ERP and the Science Program to implement these activities through their existing grants programs.

The Strategic Plan requires a completed CDEW Plan within a set period of five years. It states that until the CDEW Plan is completed, interim plans adopted by the CDEW Council and the Strategic Plan would serve as the basis for making decisions and allocating funds. We believe that during this interim period decision making and funding decisions should be carried out by the designated CALFED Implementing agencies under their existing authorities with oversight by the CDEW Council. The main drivers for water operations and ecosystem restoration during this period will be the OCAP Biological Opinions and associated CESA authorizations, the BDCP and the revised Water Quality Control Plan for the Bay-Delta resulting from SWRCB workshops and hearings. The Strategic Plan advances interim flow targets which should be evaluated as part of the processes identified above.

We have concern about the language in Strategy 5.1 which states that at least 15% of the capacity of a new conveyance facility would be dedicated to the California Delta Conservancy to allow additional management of flows and diversions and would be paid for by public funds. This suggests that the public would bear the costs of operational changes to mitigate impacts to fisheries using these capacity rights. We believe this is inconsistent with the beneficiaries pay principle and is an obligation of the water users, not the public. We believe these details should be deferred to the BDCP process to work out.

Finally, we have a concern about the proposal to create a multi-unit State Recreation Area that may include Liberty and Prospect Islands and Little Holland Tract. These islands are within the Cache Slough Complex, an area that has been identified as critical for delta smelt and other native fishes for spawning and rearing. The Department is working to acquire lands within the Cache Slough Complex for ecological enhancements and for wildlife values. We are concerned that a State Recreation Area designation of this area may allow incompatible recreational uses that may degrade habitat for sensitive species. Studies of the effectiveness of habitat restoration are occurring on Liberty Island and are planned for Prospect Island and Little Holland Tract. It is also proposed that a portion of Sherman Island be part of this new State Recreation Area. Any use of Sherman Island as a recreation area should be compatible with the existing and ecologically important western portion and tip of the island, which contains one of the largest contiguous patches of emergent marsh in the Delta. Compatible

recreational uses may eventually be possible in some of these areas once these restoration projects and studies have been completed; however, at this time, we recommend the State Recreation Area proposal be removed from the Strategic Plan.

Thank you again for the opportunity to comment on the staff draft Delta Vision Strategic Plan. Department staff is available to provide technical assistance in drafting future versions of the Strategic Plan on the topics covered in this letter. If you have any questions about these comments please contact Mr. Carl Wilcox, Chief, Water Branch.

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